2014 IL App (1st) 122758-U
No. 1-12-2758
Order filed April 9, 2014

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

ADEBOLA FAGBEMI,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 2011 CH 14791
	)	
CITY OF CHICAGO, et al.,	)	
	)	The Honorable
Defendants-Appellees.	)	Peter Flynn,
	)	Judge, presiding.

PRESIDING JUSTICE HYMAN delivered the judgment of the court.
Justices Pucinski and Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The administrative decision to discharge plaintiff for his role in a time-sensitive emergency was not against the manifest weight of the evidence where the facts in the record sufficiently support the Board's findings that plaintiff's errors in judgment led to a negligent response. The Board's decision to discharge, rather than demote plaintiff for cause based on the factual findings, was not arbitrary or unreasonable.

¶ 2 Plaintiff, Adebola Fagbemi, appeals from the trial court's decision upholding the City of Chicago Human Resources Board's decision to terminate his employment as the Chief Filtration Engineer with the City of Chicago, Department of Water Management (Department). Fagbemi

contends the findings of the Board, and the trial court's decision upholding those findings, were against the manifest weight of the evidence. He further argues the decision to discharge, rather than demote him, was unreasonable and arbitrary.

¶ 3 Fagbemi, as the Chief Filtration Engineer at the City of Chicago's South Water Purification plant, led the response to an unusual situation that arose at the plant on December 17, 2009. Fagbemi's conduct that day eventually resulted in the City's Human Resources Board terminating his employment. Fagbemi sought review of the Board's decision in the circuit court. Following an initial remand by the circuit court for explanation of the Board's decision to discharge, rather than to demote Fagbemi, the circuit court ultimately upheld the Board's findings and its choice of penalty.

¶ 4 Based on the totality of the circumstances, and, in particular, Fagbemi's response to the unusual situation, the Board's decision to terminate his employment was neither arbitrary nor unreasonable, and we affirm.

¶ 5 Background

¶ 6 Fagbemi worked for the defendant, City of Chicago, Department of Water Management from October 1988, until his termination on April 22, 2010. Fagbemi was the Chief Filtration Engineer at the South Water Purification Plant (SWP plant), which provides drinking water for Chicago area residents. John Spatz, the Commissioner of the Department at the time, terminated Fagbemi's employment after an unusual situation occurred at the plant on December 17, 2009.

¶ 7 Before his termination, Fagbemi's performance record was excellent. He had no prior discipline and during his career received multiple promotions and was twice "double" promoted, meaning promoted two levels up. In 2002, he became Chief Filtration Engineer at the SWP

plant. As the Chief Filtration Engineer, Fagbemi was responsible for directing and supervising all the SWP plant's operations and maintenance.

¶ 8 The Department operates the two largest conventional water treatment plants in the world: the Jardine Water Purification Plant, which is the largest, and the SWP plant, the second largest. Together, daily, the plants clean about 850 million gallons of water and provide water to about 5.4 million people. Unlike most of the Chicago suburbs, which have at least a day and a half of reserve water, the City's water demands are met by the Department on an hour by hour basis.

¶ 9 The water filtration process at the SWP plant begins when Lake Michigan water flows into one of five basins, each holding 30 million gallons of water. Purification takes place in four stages. During stage one, coagulation, chemicals, like acidic aluminum sulfate (alum), are added to each water basin to cause the particles in the water to bind together into "floc." The coagulant is mixed in the water by large paddles called flocculators. During stage two, sedimentation, the floc sinks to the bottom of the basin as the water enters the basin's settling chamber. Over time, the floc forms sludge on the walls and floor of the basin, which needs to be removed periodically. Stage three, filtration, is the last physical process to remove solids from the water. Water flows out of the basins through filters to catch any material that did not settle during sedimentation. The filters can be cleaned by backwashing, which is the reversal of the flow of water through the filter back to the basin. From the filters, the water enters the clear wells where stage four, disinfection, occurs. Chemicals are added to the water to kill bacteria. The water in the clear wells is suitable for drinking and is the water that goes out to the reservoirs, outlets, and pumping stations, before distribution to the public.

¶ 10 On December 17, 2009, between 10:30 a.m. and 12:30 p.m., Tank 135 at the SWP plant dumped nearly all of its alum into Basin 3. In water filtration lingo, Basin 3 had experienced a "tank drop." While employees noticed the change in water quality in Basin 3 around 1 p.m., no one detected the tank drop because the tank alarms on Tank 135 failed.

¶ 11 Around 1 p.m., Jimmy Julion, a water chemist at the SWP plant, notified Frank Skiadopoulos, Filtration Engineer V, about an issue with the water in Basin 3, specifically, that the pH was low and the turbidity so high that it was visible to the naked eye. Turbidity measures the clarity or cloudiness of the water in NTUs. A higher NTU means a higher concentration of solids in the water. pH measures the water's acidity; pH levels should be at 7, but no higher than 8. Water that has a pH level too far from normal and that is too turbid can contain harmful material or allow the growth of harmful microorganisms.

¶ 12 Skiadopoulos was in charge of the SWP plant's control room, which monitors water quality and quantity. Before he notified Fagbemi, Skiadopoulos ordered the Assistant Chief Operating Engineer (ACOE) to direct the operating engineers (OEs) to check all of the chemical tanks for an unusual drop in the level of chemicals, which may have caused the surprising readings in Basin 3. The OEs reported through the ACOE that all tank levels were normal.

¶ 13 After being notified of the issues with Basin 3, Fagbemi instructed Skiadopoulos to have the OEs physically check every chemical tank "at the tank" to rule out an excessive drop in the levels of the chemicals in each tank. Skiadopoulos told Fagbemi he had already had all of the tanks checked. Fagbemi ordered all the in-service and out-of-service tanks and feed pumps for each tank again be checked at the tank.

¶ 14 On his way to meet Skiadopoulos in the lab, Fagbemi passed through "Hogan's alley," an observation point for Basins 2-5. Fagbemi testified that when he saw the water, he responded, "Oh s--t."

¶ 15 The OEs routinely monitor the levels of the in-service chemical tanks every hour and the levels of the out-of-service tanks each shift, or every eight hours. ACOE Jedlowski and Fagbemi stated that the OEs are trained to check all chemical tank levels and to report up the chain-of-command anything unusual, such as a sudden drop in chemical tank levels. Fagbemi stated that the OEs had given accurate reports in the past, including during previous emergency situations. The SWP plant has 50 chemical tanks and 12 "dead tanks" spread throughout three different floors, a distance of between two and three football fields. Because of the plant's size, both Fagbemi and Skiadopoulos stated they had to rely on the OEs to inspect the tanks and report any abnormal readings. Anthony Sowa, Fagbemi's counter-part as the Chief Filtration Engineer at the Jardine plant, stated he relies on his employees to report unusual readings because it is not possible for him to personally monitor everything at the plant.

¶ 16 Fagbemi's orders to check every tank a second time were relayed by Skiadopoulos to the OEs through the ACOE. The OEs reported that all the tanks were checked and all the chemical tank levels were normal. Fagbemi also asked Skiadopoulos to check the flocculators, which mix the chemicals into the water within the basin. Fagbemi explained that if one of the flocculators failed, the chemicals would not be properly mixed into the water, which would affect the turbidity.

¶ 17 Employees can monitor the plant's purification process two ways: physically or through a computer-based system. The OEs can personally check the tanks by going to each specific chemical tank in the plant and reading the meter, which provides a digital read of the chemical

levels in the tank. The SWP plant also has an electronic monitoring system, which is part of the Supervisory Control and Data Acquisition System (SCADA) that displays the levels of chemicals in each tank on one screen. SCADA can show real-time or historic data. Viewing terminals are located throughout the plant, including the Chief Filtration Engineer's office and the control room.

¶ 18 Fagbemi testified that during normal operations, employees can check "at the tanks" or through SCADA. Skiadopoulos testified that during normal operations, the OEs check the tanks "by computer."

¶ 19 Skiadopoulos stated he trusts the results from the OEs' visual inspection of the tanks more than the SCADA system because the SCADA system can malfunction. He stated that checking the actual tanks avoids transmission problems that occur between the tanks and the SCADA system, which often causes the system to give inaccurate readings. Fagbemi stated the manufacturer who services the SCADA system recommended to him that the system be "overhauled" due to its age. He explained that SCADA reading errors can happen because the Microsoft "speaking" systems and MAC "speaking" systems do not always work together. Both Fagbemi and Skiadopoulos said they do not rely on SCADA and prefer to have the OEs read and check the chemical tank levels directly at the tanks.

¶ 20 After Fagbemi was notified that all of the chemical tank readings were normal, he in turn notified his supervisor, Alan Stark, Water Quality Manager and Deputy Commissioner for the Bureau of Water Supply, about the high turbidity and low pH levels in Basin 3. Next, Fagbemi and Skiadopoulos reviewed the control engineer's chemical dosage calculations to make sure that the correct amounts of chlorine, fluoride, and alum were being released into Basin 3. The calculations were correct. Fagbemi stated he continued to investigate different possible

scenarios for the unusual readings in Basin 3 by going back and forth between the laboratory and control center, checking the flocculators, and speaking with employees. He also ordered hourly pH and turbidity testing and then increased the testing to every 10 to 15 minutes, so he could closely monitor the conditions of Basin 3.

¶ 21 Fagbemi examined the water in Basin 3. The water was cloudy to the naked eye, which Fagbemi described as "unusual." Fagbemi acknowledged he had never seen water so cloudy. Skiadopoulos testified the water in Basin 3 was cloudy and milky, "like Ouzo with water." He testified that a turbidity of 28 NTU is "very high." Spatz testified that a turbidity of 28 NTU is "almost unheard of." Skiadopoulos believed the only thing that could cause such a drastic drop in pH was the addition of an acidic chemical like fluoride, chlorine, or alum to the water.

¶ 22 Around 2 p.m., Jeffrey Sebek, Assistant Engineer of Water Purification, who supervised Fagbemi and the Jardine and SWP plants, arrived at the SWP plant and was briefed about the situation by Fagbemi. Sebek and Fagbemi inspected the flocculators again and found them to be working properly. At 3 p.m., Stark, Acting Deputy Commissioner of the Bureau of Water Supply, arrived. Fagbemi told Stark that a chemical test at 1 p.m. showed the pH levels improving. Stark asked if the chemical tanks had been checked and Fagbemi responded that they had and all levels reported normal, but he would have the tank check repeated. Fagbemi told Stark he had ordered backwashing of the filters and de-sludging of Basin 3. Fagbemi, Stark, and Sebek then inspected the Basin 3's rapid mixer, which mixes the disbursed chemicals in the water in an even manner, and verified it worked properly. By this time, the turbidity of the water in Basin 3 had risen to 60 NTU. The turbidity in the other basins remained at 1.0 NTU.

¶ 23 Around 3 p.m., Fagbemi told Skiadopoulos to have the new shift of OEs inspect every chemical tank for a third time. Fagbemi emphasized that the OEs should check "at the tanks"

and the feed pumps. The new shift of OEs reported all the tank levels normal. Fagbemi testified that if he had been told that Tank 135 was empty, he would have asked for permission to shut down Basin 3.

¶ 24 Each chemical tank is equipped with a low level alarm to warn the OEs if the chemicals are draining too quickly from the tank. There is also an alarm on a computer that is monitored by the employees to warn if the chemicals are leaving the tank faster than the set dosage. None of the alarms were triggered on December 17, nor were they reported as having gone off. Part of the SWP plant's standard operating procedures during each shift requires employees to test the alarms to make sure they correctly function.

¶ 25 Fagbemi admitted he never asked to see the drop sheets for Tank 135, or checked the tank levels through SCADA.

¶ 26 After eliminating other possible causes for the unusual levels in Basin 3, Fagbemi concluded that the cause was a "slug." A slug is a large concentration of material that accumulates over time and settles on the bottom of the basin. When the slug is dislodged from the basin's walls, it moves through the basin, and because of the high concentration of chemical material within the slug, as it moves it causes the sensors to show an abnormal pH level until it passes through the basin.

¶ 27 Fagbemi asked Skiadopoulos to check when Basin 3 had last been cleaned. Fagbemi believed it was three years. When Stark asked if the levels might be caused by the chemical alum, Fagbemi replied that the dosage of alum being fed into the water could not cause the turbidity and pH levels Basin 3 was experiencing, explaining that it would take an entire tank of alum being dumped into Basin 3 to cause such a low pH level. Fagbemi ruled out alum as a cause on the basis that two separate shifts of OEs had checked the chemical tanks a total of three

different times and reported the levels were all normal and the low tank alarms had not sounded. Stark agreed that it would take a fast tank drop of alum to affect the pH level so much. He admitted that the OEs reported no unusual drops in chemical tank levels and that no low level alarms on the tanks had gone off. Stark had no response to Fagbemi's explanation as to why he did not believe the cause could be alum under the reported facts.

¶ 28 Skiadopoulos agreed with Fagbemi's theory that a slug caused the unusual levels in Basin 3 for the same reasons Fagbemi did. Fagbemi explained that the SWP plant had experienced slugs in the past and that a slug affected the sensor readings as it passed by causing the sensors to show temporary changes to the pH and turbidity levels. Neither Stark nor Sebek questioned Fagbemi's theory that a slug was causing the unusual readings in Basin 3.

¶ 29 Anthony Sowa, Fagbemi's counter-part as the Chief Filtration Engineer at the Jardine Water Treatment Plant, testified that under the same facts known to Fagbemi, he would have concluded that a slug caused the turbidity and low pH readings in Basin 3. Sowa testified he also would have ruled out a chemical cause for the high turbidity and low pH if two different shifts of OEs reported that all the chemical tank levels were normal and no tank alarms had sounded. Under those facts, he explained, the only remaining theory was a slug.

¶ 30 Fagbemi did not wait to hear back from Skiadopoulos about when Basin 3 had last been cleaned before proceeding with the slug theory. Fagbemi began a backwash of the filters in Basin 3 to prepare for the slug. He ordered backwashing of the filters and de-sludging to insure that the filters could handle the slug when it reached them. He explained that backwashing was necessary because if the filters were too clogged, there was a risk the slug could break through the filters and pass directly into a clear well, which would be "extremely bad." Stark acknowledged that he too worried about the filters being able to handle the turbid water in Basin

3 and that it would have been dangerous if the material in that basin had pushed through the filters.

¶ 31 Stark did not tell Fagbemi that he disagreed with his slug theory or his decision to backwash. Skiadopoulos testified he did not remember anyone disagreeing with the slug theory or Fagbemi's decision to backwash. At the hearing, Stark testified he did not believe a slug was the cause of the problems in Basin 3 because it could not account for the continued low pH of the water. Spatz testified that if a slug did change the pH, it would not cause a sustained change and the pH would return to normal as the slug passed. Skiadopoulos testified that a slug could cause a low pH reading, but he was not asked whether it would affect the pH for a sustained period.

¶ 32 Fagbemi continued to supervise the backwashing and monitor the pH and turbidity of the water in Basin 3. The levels began improving and the clear wells, which the water in Basin 3 would reach once it passed through the filters, remained normal. Fagbemi believed the backwashing and de-sludging were working because at 3 p.m., the turbidity in the clear well remained normal and the turbidity of Basin 3 had decreased to 51.3 NTUs and the pH levels were almost normal.

¶ 33 Between 3 p.m. and 4 p.m., Skiadopoulos told Stark that Basin 3 had been cleaned in 2008, about 18 months before the incident, not three years as Fagbemi believed. Stark stated that when he learned this, he became more convinced a slug was not the cause. On the day of the incident, Fagbemi did not learn when Basin 3 had last been cleaned.

¶ 34 A little before 4 p.m., the results of an alum test came back showing the alum concentration in Basin 3 was about four times higher than in Basin 2. Skiadopoulos told Stark the results, but not Fagbemi. (Fagbemi was unaware that an alum test had even been ordered).

Fagbemi testified that if he had been told that the alum concentration in Basin 3 was four times the normal level, he would have asked permission to shut down Basin 3.

¶ 35 By 4 p.m., the turbidity in Basin 3 had decreased to 41.3 NTU and the pH was close to normal. Fagbemi left the SWP plant around 4:45 p.m., 45 minutes after the end of his shift. He stated the pH and turbidity levels had continued to improve and that all indications showed backwashing was "arresting the situation." He believed everything was under control. Before he left the plant, Fagbemi left instructions that Basin 3 was to be closely monitored. He stated that his staff was trained to call him 24 hours a day if anything was wrong. Fagbemi stated his staff had called him at home in the past whenever a problem arose. Fagbemi had a City-issued cell phone with him during his 90-minute commute home.

¶ 36 Skiadopoulos testified that Fagbemi never told him he was leaving or to call if anything changed. When he left, Fagbemi had not personally checked the tank levels either at the tanks or through SCADA, or with the drop sheet. Fagbemi acknowledged that if he had reviewed the drop sheet of Tank 135 after the 4 p.m. tank check, he would have known about the alum drop. Fagbemi also failed to go to the lab to get an update on any ongoing tests.

¶ 37 As the levels in Basin 3 improved, Sebek and Stark also left the SWP plant, but returned to their offices. Commissioner Spatz was kept informed of the status of the SWP plant and all decisions that were being made, including Fagbemi's theory that a slug had caused the unusual readings and that backwashing had begun. Sowa, Fagbemi's counter-part, stated that under these circumstances, with the pH and turbidity of Basin 3 improving and backwashing underway, he would feel comfortable leaving the plant and trusting his staff to continue to monitor the situation. Spatz and Stark believed that the problem was under control when Fagbemi left the plant.

¶ 38 By 5 p.m., the turbidity in Basin 3 dropped to 26.1 NTU, but the turbidity in Clear Well 4 increased to 2.0 NTU, which was 10 times the normal level. The backwash had spread the acidic, turbid water from Basin 3 to other parts of the plant. Around 5 p.m., Stark, who had returned to the Jardine plant, called the SWP plant to get an update. At 5:17 p.m., Skiadopoulos called Stark back and informed him of the turbidity in the clear wells. At 5:20 p.m., Stark informed Commissioner Spatz that the turbidity had spread to the clear wells and the alum concentration in Basin 3 was four times the normal level (the results of the alum test). Spatz ordered the backwash procedure be stopped and drove to the SWP plant to meet with Stark and First Deputy Commissioner William Bresnahan.

¶ 39 Fagbemi arrived home at 6:10 p.m. and checked his home phone for messages; there were none. He plugged-in his City cell phone to charge and went outside for 30 minutes.

¶ 40 By 6 p.m., Commissioner Spatz had arrived at the SWP plant. He immediately went to the control room to access the SCADA terminal. Within 10 minutes of arriving at the plant, Spatz learned, through SCADA, that Tank 135 had emptied almost all of its alum into Basin 3 between 10:30 a.m. and 12:30 p.m. that day. Spatz asked Skiadopoulos to bring him the drop sheet. The drop sheet showed that at 8 a.m., Tank 135 had more than 10 feet of alum, but by 4 p.m., it had only 0.12 feet of alum. Stark, who had returned to the plant, told Spatz that Basin 3 had a high alum concentration.

¶ 41 Commissioner Spatz testified the situation was a "crisis," where time was critical. He explained that if water with turbidity over 1.0 NTU could reach the outlets, a special report to the United States Environmental Protection Agency would need to be made, which could require a boil order and cause the public to lose confidence in the safety of the water supply. Stark testified that the turbidity in clear well 4 was 2.0 NTU and only one step from the outlet. The

water never reached the outlet because when Spatz arrived at the SWP plant, he ordered that the gates to the clear wells be closed to prevent the turbid water from traveling to the outlet.

¶ 42 At 6:20 p.m., Spatz asked to speak with Fagbemi; Skiadopoulos told him Fagbemi had gone home for the day. Spatz stated he was "shocked" when he heard this. Spatz testified that when he was weighing his decision about whether to terminate Fagbemi, he thought about Fagbemi's decision to leave the plant at 4:45 p.m. and how "critical" timing was in dealing with the situation. Spatz testified that in his opinion Fagbemi was negligent for "[w]alking away from [the] incident when you have literally hours to correct that incident." Spatz instructed Skiadopoulos to call Fagbemi, and Skiadopoulos tried to call two or three times, both on Fagbemi's City-issued cell phone and his home phone. The calls went unanswered.

¶ 43 Fagbemi testified that after 30 minutes of yard-work, he came inside to call the plant and check on the situation. Just as he was about to call, Fagbemi received a call from Skiadopoulos saying the situation at the plant had worsened. (Skiadopoulos testified that Fagbemi called him, not the other way around). Fagbemi returned to the plant.

¶ 44 When he arrived, he was told for the first time that all of the alum in Tank 135 had emptied into Basin 3 earlier in the day. Fagbemi also learned for the first time that an alum test had been performed and the results showed that the alum in Basin 3 was four times the normal level. Fagbemi stated that had he known about the test results, which showed high levels of alum, he would have stopped the backwashing and ordered that Basin 3 be taken out of service. Fagbemi stated he had never heard of an entire tank of alum being emptied in his 22 years of working with the Department.

¶ 45 At this time, the water was so turbid that the filters were "capped white" with alum, a sight Stark described as "ominous." Commissioner Spatz and Stark concluded that the backwash

had increased the turbidity in the clear wells. There was no way to remove the alum from the water in the clear wells, so Spatz ordered a "fill and dump," during which the water is pumped back to the beginning of the process without entering the clear wells. Fagbemi joined in the efforts and remained at the plant for about 21 hours. Skiadopoulos stayed at the plant until 10:30 p.m. Spatz went home around midnight.

¶ 46 Stark testified about the Department's remediation and clean-up efforts after the incident. The fill and dump eventually resolved the problems at the SWP plant, but at great expense. Stark had to order the Western Avenue pumping station to tap a reservoir to supplement the water supply while the SWP plant fixed the problem. An acute violation of the EPA clean water standards and a boil order were avoided, but the turbidity of the water at the outlets had increased, which is a concern because consuming turbid water, even if it is under 1 NTU, can pose a health risk to infants, elderly, and those with autoimmune disorders.

¶ 47 The following day, Fagbemi learned that the low level alarms on Tank 135 had malfunctioned on December 17. Even though standard operating procedure required each shift to test the alarms, no one reported a problem with the alarm for Tank 135 on December 17. It was also discovered that an OE had made a log entry that Tank 135 had been virtually drained, but that information was never conveyed to Fagbemi, Skiadopoulos, or anyone else. Fagbemi stated that this information should have been reported to a supervisor and then, up the chain-of-command. Spatz acknowledged that this entry on the tank drop sheets should have been reported up the chain-of-command.

¶ 48 Fagbemi remained in his position as the Chief Filtration Engineer at the SWP plant until April 22, 2010, four months after the incident. During this time, an investigation took place. First Deputy Commissioner, William Bresnahan, summarized the findings in a written report.

The investigation revealed that the tank drop occurred because an employee had improperly left the valve open on Tank 135 and another valve was kept open, allowing all of the alum in Tank 135 to drain into Basin 3. The Department was unable to identify the employee who improperly left the valves open. Fagbemi did not investigate the incident.

¶ 49 Commissioner Spatz terminated Fagbemi's employment. No other employees were terminated or disciplined. Spatz testified that he decided to terminate Fagbemi, in part, because in a "critical operation," you have "to look at certain results yourself." Spatz testified that when he arrived at the SWP plant, he accessed SCADA, and "within ten minutes [he] identified what [he] asked them to look at earlier in the day." Spatz acknowledged that Fagbemi had ordered checks and tests, but that Fagbemi "could have been checking that stuff himself. You have to see results." Spatz explained, "you have to go to a new mode when you have a crisis happening. Not just swipe out and go home and leave the crisis and hope it goes away and leave it for somebody else." Spatz considered Fagbemi's tenure with the Department together with the severity of the incident in deciding what discipline to impose, and testified his decision was based on the public health and the safety risk.

¶ 50 When Commissioner Spatz decided to proceed with discipline against Fagbemi, the City's law department drafted the charges, and the Department of Human Resources had to decide whether to allow Spatz to proceed. Fagbemi had a pre-disciplinary meeting where his union representative was present and submitted a written response to the charges. On April 22, 2010, Spatz discharged Fagbemi.

¶ 51 Fagbemi challenged his discharge at an administrative hearing at the Human Resources Board of the City of Chicago. At the hearing, the City presented the testimony of water chemist, Jimmy Julion; filtration engineer, Frank Skiadopoulos; Acting Deputy Commissioner of the

Bureau of Water Supply, Alan Stark; and then-Commissioner, John Spatz. Fagbemi testified on his own behalf and presented the testimony of Anthony Sowa, his counter-part at the Jardine plant; ACOE Lonzo Davis; and ACOE Gary Jedlowski.

¶ 52 In 2008, Fagbemi filed suit against Commissioner Spatz and the City, arguing Spatz had promoted a less experienced employee over Fagbemi because of that employee's political connections. The suit was dismissed on March 19, 2010. At the hearing on Fagbemi's discharge, Spatz testified that the unrelated lawsuit Fagbemi filed against him and the City did not play a role in his decision to discharge Fagbemi. Spatz testified he based his decision solely on Fagbemi's response to the incident of December 17, 2009.

¶ 53 Following the hearing, the hearing officer's report recommended the Board demote, but not terminate, Fagbemi.

¶ 54 Fagbemi then requested an oral argument before the entire Board. Arguments were heard from both parties on December 14, 2010. The Board affirmed the Department's decision to terminate Fagbemi's employment. The Board found the City proved beyond a preponderance of the evidence that Fagbemi violated Personnel Rule XVIII (1) (29), (36), and (39). Personnel Rule XVIII (1)(29) prohibits, "[f]ailing to take action as needed to complete an assignment or perform a task safely." Rule XVIII (1)(39) prohibits,

> "[i]ncompetence or inefficiency in the performance of the duties of the position. This means performance of the duties of the position at a level lower than that ordinarily expected of other employees in similar positions, due either to lack of ability, knowledge or fitness, lack of effort or motivation, carelessness or neglect."

Fagbemi was also charged with violating Personnel Rule XVIII (1)(36), which prohibits failing "to comply, in carrying out any acts in the scope of employment, with laws or departmental rules

governing health, safety, and sanitary conditions." The Board found the City failed to adequately identify which laws or rules were at issue or how they were violated by Fagbemi's actions; yet, determined that Fagbemi's actions violated subsection 36.

¶ 55 The Board found significant that Fagbemi failed to check either the SCADA data or the tank drop sheets, though both were available, and failed to check for the results of the alum test before leaving the plant. The Board found it was " unreasonable" for Fagbemi "to rely solely upon the word of his subordinates that they had checked all the tanks, even in light of the fact the low level alarm on tank 135 did not work[,]" and that Fagbemi's "[f]ailure to check the SCADA and/or tank drops sheets and/or results of the alum test that day demonstrated a failure to take action as needed to complete an assignment or perform a task safely," in violation of subsection 29 of the personnel rules.

¶ 56 The Board concluded that Fagbemi's "overall conduct during the emergency situation on December 17, 2009, as the person in charge of a time-sensitive operation affecting public health seemed negligent and/or careless and show[s] that he is no longer fit for that position." The Board found the hypothetical answers Sowa provided were "vague and were, at times, not believable." Based on the severity of the infraction and on the totality of the circumstances surrounding the misconduct, the Board decided discharge was more appropriate.

¶ 57 On administrative review, the trial court remanded the case to the Board "to explain why the hearing officer's recommendation for a demotion is not an adequate penalty as opposed to removal." The Board issued a second opinion supporting its decision to discharge Fagbemi. The trial court upheld termination.

¶ 58 Arguments

¶ 59 Even though Fagbemi does not raise an issue with the inconsistency regarding the Board's statements under subsection 36, the City, on appeal, chooses not to rely on subsection 36 to support Fagbemi's discharge. Instead, the City argues Fagbemi's discharge is an appropriate sanction for his violation of subsections 29 and 39 of the Department's personnel rules.

¶ 60 The City argues the Board's findings were "amply supported" by testimony from numerous witnesses, including plaintiff and, therefore, are not against the manifest weight of the evidence. The City contends it is uncontested that the alum drop in Tank 135 created a time-sensitive emergency situation and that Fagbemi, as the Chief Filtration Engineer of the SWP plant, was in charge of the response.

¶ 61 The City argues Fagbemi disregarded the actual cause of the incident, an alum tank drop, and wrongly identified the problem as a slug because he relied on faulty reports from his staff, failed to review readily available information, such as SCADA, and failed to seek out other information about the plant, like the alum test results and the status of the tank alarms. According to the City, Fagbemi compounded the problem by ordering a backwash, which spread the unclean water throughout the plant, including the clear wells. Fagbemi left the plant before the situation was resolved and without telling anyone he was leaving. He then was out of touch for two hours.

¶ 62 Fagbemi argues the Board's factual findings were against the manifest weight of the evidence and its decision to terminate was unreasonable and arbitrary. He considers the Board's findings "completely groundless and reflect[ing] a complete misunderstanding of the record." Further, he contends he was never charged with the following alleged failures for which the Board improperly faulted him to justify termination: (i) not having a procedure in place to ensure the low level alarms were working; (ii) not investigating the actions of his subordinates for their

role in the incident; (iii) not checking the results of the alum test before he left; (iv) leaving the plant without telling anyone; and (v) failing to call the plant "immediately upon arriving home."

¶ 63 Fagbemi also disputes four of the actual charges, arguing that these charges lacked factual support and, therefore, the Board's decision to terminate based on the charges was unreasonable. Fagbemi was faulted for: (i) failing to check all the chemical tank levels; (ii) failing to conclude the problem was alum, not a slug; (iii) deciding to implement backwashing and his monitoring of it; and (iv) leaving the plant at a critical time and failing to call-in.

¶ 64 Failure to Check All Chemical Tank Levels

¶ 65 Fagbemi argues the Board's conclusion that he failed to check chemical tank levels is against the manifest weight of the evidence. Fagbemi contends the Board failed to consider all the things he did do as he tried to resolve the situation, including ordering three times that every chemical tank be inspected by OEs on two different shifts; personally inspecting the flocculators, rapid mixers, and chemical dosage calculations; and directing that pH testing be performed every 15 minutes. He argues the evidence showed the plant is too large for any one individual to personally check every tank and, therefore, it was proper for him to rely on the well-trained OEs to inspect tank levels and report any anomaly up the chain-of-command. Indeed, Fagbemi's counter-part at the Jardine plant, Sowa, explained that he had to rely on his employees to report any unusual readings because it was not physically possible for him to monitor everything. Also, Fagbemi's subordinates had always reported or discovered problems in past emergency situations. Fagbemi argues the City cannot credibly contend that he should not have relied on his subordinates under these facts, when his superiors did as well.

¶ 66 The City offered no evidence to contradict Fagbemi, Sowa and Skiadopolous' testimony that they must rely on the OEs to inspect each of the tanks and report any abnormal readings

because of the size of the plant or ACOE Jedlowski's testimony that all OEs are trained to check the chemical tank levels and report up the chain-of-command any anomaly, such as a sudden drop in chemical tank levels. The City did not dispute that Fagbemi ordered his subordinates to inspect each tank three times over the course of two shifts. Nor did the City dispute that the SWP plant is immense, has thousands of pieces of equipment, and requires 130 employees to monitor its operations.

¶ 67 Failure to Conclude Problem was Alum

¶ 68 Next, Fagbemi argues the Board erred in faulting him for failing to conclude that the problem was alum and not a slug. Fagbemi acknowledges that subsequent events showed that an entire tank of alum emptied into Basin 3, causing the unusual readings; however, the uncontested evidence presented at the hearing proved that his slug theory was reasonable, particularly given the information he had at the time. Fagbemi testified that during his 22-year career, he never heard of an entire tank of alum being emptied. During the incident, when Fagbemi hypothesized that a slug was causing the unusual readings, Skiadopolous, Stark, Sebek, and Spatz never disagreed with him. Fagbemi testified he had experienced slugs in the past and that they had affected the sensors and caused abnormal pH and turbidity readings.

¶ 69 Although the City claimed that it had doubts about Fagbemi's slug theory, none of its employees expressed doubts on December 17. During the hearing, the City contended Fagbemi's theory was flawed because he alluded to his belief that Basin 3 had not been cleaned in three years as a possible reason for the slug. Fagbemi argues that although he hypothesized that Basin 3 had not been cleaned in three years, his slug theory was based on all the information and reports given to him that ruled out a chemical cause for the low pH and high turbidity, not his guess about when the basin had last been cleaned. The City contended that Fagbemi's slug

theory was undermined because Basin 3 had been cleaned 18 months before. Fagbemi argues testimony to that effect was disingenuous because when Spatz and Stark learned around 3:20 p.m. that Basin 3 had last been cleaned 18 months before, they did not seek to revisit the slug theory with him. Neither Spatz nor Stark sought to stop the corrective measures (backwashing) based on his slug theory until 5:20 p.m., two hours after they learned when the last cleaning of Basin 3 had occurred.

¶ 70 Fagbemi also disputes the Board's finding that he improperly failed to take the low pH level of Basin 3 into consideration when he concluded that the unusual readings were based on a slug. During the hearing, Spatz and Stark testified that Fagbemi's slug theory did not take into account the pH readings. Fagbemi argues the uncontested evidence proves he fully considered the pH level of Basin 3. Fagbemi and Skiadopolous testified that all chemical tank levels were checked three times to verify that alum, chlorine, or fluoride, which could affect the pH levels of Basin 3, had not had an excessive tank level drop. Fagbemi stated he reviewed the control engineer's chemical dosage calculations to ensure the correct amounts of the chemicals were being released into Basin 3.

¶ 71 Decision to Implement Backwashing and His Monitoring of It

¶ 72 Fagbemi argues he was improperly faulted for his decision to implement backwashing and for his monitoring of it and that the Board's finding that his decision was unreasonable or showed a failure to perform his duties is unsupported by the evidence. When the backwashing began, Spatz, Stark, and Sebek were aware of it, but no one suggested it should be stopped. The evidence showed that, as the backwashing continued the turbidity and pH levels in Basin 3 improved and the levels in the clear wells remained normal. Based on these readings, Fagbemi

believed that the backwashing was working, which further confirmed his theory that a slug was responsible.

¶ 73 As to the backwashing and his monitoring, Fagbemi asserts that the Board's findings were against the manifest weight of the evidence. He insists that he continued to supervise the backwashing and monitor the turbidity and pH levels, and he ordered hourly pH and turbidity testing, rather than the normal 4 hour testing. As he continued to monitor the levels, the pH levels returned to normal and the turbidity levels continued to decrease.

¶ 74 Leaving the Plant and Failing to Call-in

¶ 75 Lastly, Fagbemi contests the Board's finding that he left the plant without first ensuring that the problems were fixed and failed to contact the plant later to see if the problem had resolved. Fagbemi argues that he was never charged by the Board with leaving the plant without telling anyone. He asserts that when he left, 45 minutes after his shift ended, all the evidence indicated that backwashing was "arresting the situation." The evidence showed the turbidity was improving and the pH level had returned to normal. Sowa testified that with the pH and turbidity improving, he would have felt comfortable leaving and relying on staff to monitor the situation and report anything out of the ordinary.

¶ 76 Analysis

¶ 77 Our role is to review the decision of the administrative agency, not the circuit court. *Metro Developers, LLC v. City of Chicago Department of Revenue,* 377 Ill. App. 3d 395, 397 (2007). " 'In discharge cases, "[t]he scope of review of an administrative agency's decision regarding discharge is generally a two-step process involving first, a manifest-weight standard, and second, a determination of whether the findings of fact provide a sufficient basis for the agency's

conclusion that cause for discharge does or does not exist." ' " *Department of Juvenile Justice v. Civil Service Comm'n,* 405 Ill. App. 3d 515, 521 (2010) (quoting *Department of Human Services v. Porter,* 396 Ill. App. 3d 701, 718 (2009), quoting *Brown v. Civil Service Comm'n,* 133 Ill. App. 3d 35, 39 (1985)).

¶ 78 The administrative agency's findings and conclusions on questions of fact are held to be *prima facie* true and correct. 735 ILCS 5/3-110 (West 2012); *American Federation of State, County & Municipal Employees, Council 31 v. Illinois State Labor Relations Board, State Panel,* 216 Ill. 2d 569, 577 (2005). The agency's factual findings will not be reversed on review unless they are against the manifest weight of the evidence and the discharge determination will be reversed only if it is arbitrary and unreasonable. *Department of Juvenile Justice v. Civil Service Comm'n,* 405 Ill. App. 3d at 521. The question is not whether we would have imposed a different penalty, but whether the evidence supports the administrative agency's decision. *Id.* at 524-25.

¶ 79 As a reviewing court, we are to give great deference to the agency's choice of sanction and reverse that sanction, only if it is arbitrary, unreasonable, or unrelated to the needs of the agency. *Launius v. Board of Fire & Police Commissioners*, 151 Ill. 2d 419, 435 (1992). We must determine whether the Board's findings of fact support its conclusion that "cause" existed for Fagbemi's discharge. "Cause" is defined as " 'some substantial shortcoming which renders [the employee's] continuance in his office or employment in some way detrimental to the discipline and efficiency of the service and something which the law and a sound public opinion recognize as a good cause for his [discharge].' " *Walsh v. Board of Fire & Police Commissioners*, 96 Ill. 2d 101, 105 (1983) (quoting *Fantozzi v. Board of Fire & Police Commissioners*, 27 Ill. 2d 357, 360 (1963)).

¶ 80 We find the Board's decision to terminate Fagbemi was predicated on facts sufficiently supported by the evidence in the record. The Board determined that the serious health concerns coupled with the Department's on-demand treatment process warranted a different response from Fagbemi on December 17, 2009. We cannot say the opposite conclusion is evident, even if we accept that the tank drop was a rare event. Nor can we say on this record that it was arbitrary or unreasonable for the Board to conclude that Fagbemi "demonstrated deficiencies in his management, leadership, and decision making skills that…showed he was unfit for his job," such that termination was warranted.

¶ 81 Sufficiency of Discharge Grounds

¶ 82 Fagbemi argues that because the Board relied on five grounds not among the official 13 charged allegations to justify his termination, reversal or a new hearing is necessary. We disagree. Fagbemi's argument relies on a reading of the charges and the record that is too narrow.

¶ 83 The charges were sufficient to put Fagbemi on notice of the basis for which dismissal was sought, including the five failures he alleges were not among the 13 official charges against him. Every charge against Fagbemi related to his response to the December 17, 2009, incident. Fagbemi had notice that all of his actions in response to the incident were at issue.

¶ 84 Charges 1-11 specifically allege that Fagbemi failed to "properly evaluate and respond to an emergency situation" at the plant. Charges 1-4 specifically faulted Fagbemi for "failing to recognize that alum tank 135 was empty and/or failing to recognize the cause for the change in the pH level and/or the cause for the change in turbidity." The charges gave Fagbemi notice that his failure to recognize the alum drop as the cause of the problems with Basin 3 was at issue and, included in that, was his failure to make sure the low level alarms were working, his failure to

investigate the actions of his subordinates, and his failure to check the results of the alum test before he left for the day. In charge 9, Fagbemi was faulted for "fail[ing] to properly maintain [his] location at the [SWP plant] in order to ensure the problem was resolved." Charge 9 went on to further fault Fagbemi for leaving the plant for the day "without contacting the Plant to determine whether the problem was resolved" and for "fail[ing] to response to calls made by your superiors to your City-issued mobile phone[.]" This charge gave Fagbemi notice that the Board would be considering his departure from the plant and his communication, or lack thereof, with his supervisors and other plant personnel about the issues with Basin 3.

¶ 85 Because the complaint sufficiently advised Fagbemi of the nature of the charges against him and because the evidence presented at the hearing related to those charges, we find Fagbemi's contrary argument lacks merit. See *Kankakeeland Cmty. Action Program v. Dep't of Commerce and Cmty. Affairs,* 197 Ill. App. 3d 1067, 1075 (1990) (although charge in administrative proceeding must be sufficiently clear and specific to allow preparation of defense, it need not be "drawn with the precision required in judicial actions").

¶ 86 We further find that these five grounds were based in fact and do not, as Fagbemi suggests, "reflect a fundamental misunderstanding of the record." Evidentiary support is found for all five and will be incorporated into the discussion below.

¶ 87 Factual Findings

¶ 88 The Board's factual findings were not against the manifest weight of the evidence. The Board concluded that Fagbemi violated Personnel Rules XVIII(1), subsections 29 and 39 and made specific factual findings that supported the violations.

¶ 89 The Board found an "emergency situation" developed at the SWP plant when tank 135 experienced a tank drop and that Fagbemi as the CFE was "the individual in charge of the plant during that time."

¶ 90 The Board made several factual findings in faulting Fagbemi for failing to complete checks of the chemical tanks or obtain the results of the alum test. The Board recognized that Fagbemi instructed his subordinates to check all the tanks, but weighed this fact in light of his failure to check SCADA, the tank drop sheet or the results of the alum test, all of which were "readily available" before leaving the plant for the day. The Board found it was "unreasonable" for Fagbemi to "rely solely upon the word of his subordinates that they had checked all the tanks" and that his failure to check SCADA, the tank drop sheet or the results of the alum test "demonstrated a failure to take action as needed to complete an assignment or perform a task safely," in violation of subsection 29. The Board further found that Fagbemi's actions "demonstrated an incompetence, at best an inefficiency, in the performance of the duties of [his position,]" in violation of subsection 39.

¶ 91 The Board's findings are not against the manifest weight of the evidence. Fagbemi's failure to check the tanks himself, SCADA, or the drop sheet affected his response. Fagbemi testified `that if he had reviewed the drop sheet after 4 p.m., before he left the plant for the day, he would have discovered the alum drop. He further testified that if he had known that Tank 135 was empty or how high the alum concentration was, he would have directed the shutdown of Basin 3.

¶ 92 Fagbemi argues the Board ignored the uncontested evidence that SCADA was unreliable; however, the evidence on this point was not uncontested. Spatz was able to view the data on SCADA and recognize the source of the problem within minutes of being at the SWP plant.

Furthermore, both Fagbemi and Skiadopoulos testified that during normal plant operations, employees may use SCADA to check the tank levels, thereby recognizing that SCADA was not completely unreliable.

¶ 93 Fagbemi contends it is easy to use hindsight to fault him for not discovering that the alum in Tank 135 had emptied into Basin 3, but that doing so is unreasonable given the evidence. Fagbemi argues the Board improperly held him responsible for failing to ask about the results of the alum test when he was unaware that the test was even performed. The evidence showed Julion, Skiadopoulos, Stark, and Commissioner Spatz were all aware of the alum test. All testified they learned of the results around 4 p.m. that day. The Board found it unreasonable that Fagbemi, as the individual responsible for the incident response, left the plant in the middle of an emergency situation without notifying anyone. Had Fagbemi notified Julion, Skiadopoulos, Stark, or Spatz that he was leaving for the day, they could have informed him of the results of the alum test. The Board's conclusion that Fagbemi's overreliance on reports from his subordinates showed poor leadership and judgment in the face of a crisis was supported by the evidence.

¶ 94 Fagbemi argues the evidence does not support the Board's conclusion that his belief that a slug had caused the problems on December 17 was a sign of incompetence, particularly when his theory was never disputed by any other manager that day and was the only reasonable theory based on the information he had at that time. Fagbemi argues his theory of a slug was not only reasonable, but the only possible cause of the issues with Basin 3 based on the information known at the time and, therefore, the Board's fault of him for this theory was unreasonable. Fagbemi's argument is essentially that he cannot properly be held responsible for the unusual event because he only had access to inaccurate information.

¶ 95 The Board faulted Fagbemi for his response based on the evidence presented and did not rest its decision on hindsight. Fagbemi, as the individual responsible not only for the SWP plant, but the response to the unusual incident, was required to seek out other sources of readily available information. The Board found that had Fagbemi checked either SCADA, the tank drop sheet or the results of the alum test before he left for the day, the drop in alum in Tank 135 would have easily been discovered as the cause of the low pH and high turbidity in Basin 3. Further, the Board found the evidence supported its conclusion that even based on the information Fagbemi had, a slug was not the only possible explanation because the evidence showed a slug would not account for a sustained drop in the pH level. Stark testified that a slug could not account for the low pH because all the material in a basin has the same pH as the water. Spatz testified that a slug could change pH readings, but only for a short time. Julion corroborated Spatz's testimony—when the SWP plant had experienced slugs in the past, the water readings changed, but only for a few minutes. Fagbemi testified that past slugs had only caused a temporary change in the pH. We cannot say the Board's conclusion that Fagbemi "fail[ed] to take into account the low pH when acting upon the theory that there was a slug" was against the manifest weight of the evidence.

¶ 96 Fagbemi also argues the Board failed to consider the evidence that Stark, Sebek and Spatz never told him they disagreed with his slug theory or that Basin 3 had last been cleaned just 18 months before the incident, not three years as he believed. Fagbemi's contention, however, does not account for the fact that the evidence showed he was the individual responsible for the response and, therefore, whether anyone agreed with his theory was irrelevant in determining if he acted incompetently in his response to the incident. Additionally, the evidence showed that Fagbemi asked Skiadopoulos to find out when Basin 3 had last been

cleaned, but acted on his slug theory by initiating backwashing before that history was reported. The Board's unfavorable interpretation of this evidence is not against the manifest weight of the evidence.

¶ 97 The Board faulted Fagbemi for instituting backwashing, an unnecessary and costly procedure, in light of the cause of the low pH and high turbidity of Basin 3. The Board held that had Fagbemi properly identified the cause as an alum drop in Tank 135 before he left for the day, he would have (by his own admission) shut down Basin 3, which would have made the backwash unnecessary and saved the Department time and money. The Board further found that had Fagbemi shut down Basin 3, the highly turbid water would not have spread. The Board further faulted Fagbemi for ordering backwashing "without monitoring it."

¶ 98 The evidence shows the backwash spread the acidic, turbid water from Basin 3 to other areas of the plant, including the clear wells. The backwash was stopped by Spatz, not Fagbemi, when he learned that it was spreading the unclean water. The evidence showed that while the backwashing was underway, Fagbemi left the plant and, therefore, was not monitoring it. The Board's finding here was not against the manifest weight of the evidence.

¶ 99 Lastly, Fagbemi contends the Board's conclusion that he left the plant without telling anyone and failed to call the plant when he got home is against the manifest weight of the evidence. We disagree.

¶ 100 The Board found based on the evidence that the emergency situation at the plant "was not resolved by the time [Fagbemi] attempted to leave for the day." It is undisputed that Fagbemi left the plant at 4:45 p.m. and that at that time, the last reading he had of Basin 3 from 4 p.m., showed that the turbidity was still abnormally high. Fagbemi admitted that he did not tell

anyone he was leaving the plant, did not call anyone on his commute home, or when he arrived home.

¶ 101 Nevertheless, Fagbemi says it was improper for the Board to find it unreasonable for him to leave when his subordinates were aware that they were to monitor Basin 3 and, as in the past, contact him if any problems arose. Fagbemi argues he cannot be faulted for failing to check on the situation when his subordinates were trained to call him with anything unusual during emergency situations. But, Fagbemi's argument does not undermine the Board's conclusion that he left the plant without telling anyone and failed to call to check on the status of the situation once he arrived home. The Board's conclusion that Fagbemi's actions were unreasonable in light of the emergency situation is not against the manifest weight of the evidence.

¶ 102 Totality of the Facts

¶ 103 Lastly, Fagbemi argues the Board failed to consider the totality of the facts and ignored a number of mitigating factors, which if considered, would have established that the events on December 17 were not severe enough to show that Fagbemi had "some substantial shortcoming" rendering his continued employment "detrimental to the discipline and efficiency of the service" as required by law." See *McCloud v. Rodriquez*, 304 Ill. App. 3d 652, 654 (1999). Fagbemi contends the Board improperly terminated him "based on a series of very unusual events and an atypical failure of others to take note of and report information up the chain of command regarding Tank 135."

¶ 104 Fagbemi cites several cases to support his argument that if the Board had properly considered the totality of all the relevant facts, in particular, his exemplary performance record, he could not properly be discharged. Fagbemi cites *McCloud* and *Kreiser v. Police Bd. of City of*

Chicago, 40 Ill. App. 3d 436 (1976), as support for his position that the facts of his case are not sufficiently severe enough to support termination.

¶ 105 In *McCloud*, the plaintiff had a physical altercation with his wife, in which he shot her with his service revolver when she reached for a gun. He then refused to request medical attention for his wife, held her hostage and threatened to shoot anyone who entered their home. In response, the police had to call in a hostage and barricade team. *McCloud*, 304 Ill. App. 3d at 654, 662-63. On appeal, the plaintiff argued his termination for cause was not supported by the evidence because the evidence did not prove that his actions in hitting and shooting his wife were unjustified under the facts. The court held that the "totality" of the plaintiff's conduct was "detrimental to the discipline and efficiency of the department and undermines his reputation," regardless of whether his use of the weapon was justified. *McCloud*, 304 Ill. App. 3d at 663.

¶ 106 In *Kreiser*, this court held that the evidence supported the police board's findings that the plaintiff had engaged in conduct which "brought discredit on the Department," but that, in light of his six year satisfactory service record, his conduct was not "sufficiently substantial or so significantly related to the performance of [his] police duties" to warrant termination of his employment. *Kreiser*, 40 Ill. App. 3d at 441-42. The evidence showed the plaintiff failed to have his personal vehicle properly licensed, falsely claimed to his superior officer that he did not drive his unlicensed vehicle, falsely claimed that when he drove his unlicensed vehicle he was on his lunch break, left his duty assignment without being properly relieved when he attended traffic court, and failed to submit written reports explaining his conduct when ordered to do so. *Kreiser*, 40 Ill. App. 3d at 437-38.

¶ 107 Fagbemi argues the facts of his case justify the same result as *Kreiser*, that is, that even though evidence supported the specific findings and charges, when all of the facts are considered

together with the employee's past performance, the findings are not serious enough to warrant discharge. Fagbemi gives particular significance to no one above or below him in the chain-of-command having discovered the alum tank drop until the alum test results were returned. And, Fagbemi argues the Board's decision to terminate is unreasonable because no other employee was disciplined for his or her role.

¶ 108 Our supreme court held in *Launius* that a comparison of the sanctions imposed on other employees is relevant only in "completely related cases" that involve the "same incident." *Launius*, 151 Ill. 2d at 442. None of the cases Fagbemi cites are "completely related" to his and, therefore, are distinguishable. Unlike the cases he cites, Fagbemi's misconduct had the potential to affect the public's health, a serious consequence of his response.

¶ 109 As the reviewing court, we may not consider whether we would have imposed a more lenient disciplinary sentence. *Wilson v. Board of Fire & Police Commissioners*, 205 Ill. App. 3d 984, 992 (1990). Our review is limited to a determination of whether the Board acted unreasonably or arbitrarily by selecting a type of discipline that was inappropriate or unrelated to the needs of the service. *Wilson*, 205 Ill. App. 3d at 992. We hold the Board did not act unreasonably or arbitrarily in determining Fagbemi's response to the incident constituted cause for discharge.

¶ 110 The Board's first decision recognized that the hearing officer recommended that Fagbemi be demoted to Filtration Engineer V, without back pay, rather than be discharged from his position as Chief Filtration Engineer. The Board determined "the evidence presented, weighing all the situational factors involved in the misconduct including, but not limited to, the severity of the infraction, the number of times it occurred, and the totality of the circumstances surrounding the misconduct," supported discharge of Fagbemi for his role in the December 17, 2009,

incident. On remand, in accordance with the circuit court's order to explain why discharge was chosen over demotion, the Board highlighted the findings it had relied on in concluding as it did. The Board found it telling that Fagbemi had access to SCADA and the tank drop sheet, but failed to check either and that if he had, he would have been able to identify the cause of the problem. The Board found Fagbemi acted unreasonably in leaving the plant without telling anyone and, when he arrived home, in failing to check on the status of the plant or the backwashing. The Board concluded that Fagbemi's "overall conduct" in responding to "a time-sensitive operating affecting public health *** show[ed] that he [was] no longer fit for that position."

¶ 111 The Board also faulted Fagbemi for failing to follow through with his slug theory. Fagbemi did not call the plant to get updates on the backwashing once he left. Although Fagbemi testified that everything was under control, Stark and Spatz both testified that even though the numbers were improving, the situation remained abnormal. Based on the evidence presented, the Board concluded that when Fagbemi left, "the emergency situation was not resolved." Had Fagbemi remained or called in shortly after he left or when he arrived home, he would have learned that the backwashing precipitated the spread of the contaminated water into other areas of the plant.

¶ 112 Fagbemi argues that the City's contention that because he was in charge of all operations he should be terminated is not reasonable in light of the evidence that the incident occurred because of a series extremely unusual events. Fagbemi argues the Board failed to consider that both Sebek and Stark returned to their offices on December 17 without checking SCADA and unlike Fagbemi, Stark knew the alum test results were four times the norm. Fagbemi argues that more egregious than simply not checking SCADA was Stark's decision not to stop the backwashing after he found out the alum test results at 3:30p.m. Spatz acknowledged that the

OE who noted the drop in alum on Tank 135 on the tank drop sheets should have reported the information to the control center engineer, who should have reported it to his supervisor; yet, neither of these employees was disciplined. Fagbemi argues that in light of all of this evidence, his discharge was not appropriate because it was selective enforcement of the rules. See *Fox v. Illinois Civil Service Commission*, 66 Ill. App. 3d 381, 390-91 (1978) (selective enforcement against use of profanity).

¶ 113 Even in light of the fact that no other employees were disciplined, the Board's decision to discharge Fagbemi was not unreasonable. Fagbemi was in charge of all of the operations of the SWP plant and was the lead incident responder. Based on all the evidence, Fagbemi failed to exhibit good investigatory judgment in the face of a time-sensitive crisis. The Board considered the totality of the circumstances, including Fagbemi's mitigating evidence, but ultimately held the facts supported termination. Because of Fagbemi's errors in judgment during his response, the Department lost faith in Fagbemi's ability to manage a crisis. We cannot say this was unreasonable.

¶ 114 Affirmed.